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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/851,285

05/08/2001

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ATTB 0104 PUS

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11/03/2008

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EXAMINER

SALTARELLI, DOMINIC D

ART UNIT

PAPER NUMBER

2421

MAIL DATE

DELIVERY MODE

11/03/2008

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* HARVEY R. BIALK and JYOTI A. KULKARNI

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Appeal 2008-0355  
Application 09/851,285  
Technology Center 2400

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Decided: October 31, 2008

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Before KENNETH W. HAIRSTON, ROBERT E. NAPPI, and KARL D.  
EASTHOM *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 of the rejection of claims 1 through 11, 13 through 25, and 27.

We affirm-in-part the Examiner's rejections of these claims.

## INVENTION

The invention is directed to a system for managing a hybrid fiber coax network. The system makes use of a database of the physical and logical configuration of elements in the network. The database also includes information about elements not in the network (e.g. devices that may be used in the network at a later date). See pages 3 and 4 of Appellants' Specification. Claim 1 is representative of the invention and is reproduced below:

1. In a broadband network having a hybrid fiber coax (HFC) network having network elements operable for communicating telephony, data, and video signals with customer-premises equipment (CPE) of subscriber households, the network elements including a host digital terminal (HDT) for communicating the telephony signals, a cable modem termination system (CMTS) for communicating the data signals, and video equipment for communicating the video signals, a fiber optics network connecting the HDT, CMTS, and video equipment to a fiber optics node, and a coax cable network connecting the fiber optics node to the CPE of the subscriber households, an HFC network management system comprising:

a service, design, and inventory (SDI) system having a database operable for storing data indicative of an inventory of the network elements and the CPE in the HFC network and an inventory of CPE which are out of the HFC network, for storing data indicative of configuration and connectivity of the network elements and the CPE in the HFC network, and for storing data indicative of assigned capacity of the HFC network based on the configuration and the connectivity of the network elements and the CPE in the HFC network; and

an online provisioning application link (OPAL) operable with the database of the SDI system for provisioning a CPE in the inventory of CPE which are out of the HFC network to be added into the HFC network and for provisioning network elements in the HFC

network with the CPE added into the HFC network based on the assigned capacity of the network elements.

#### REFERENCES

Opoczynski	US 5,519,830	May 21, 1996
Dev	US 5,559,955	Sep. 24, 1996
Farry	US 5,608,447	Mar. 4, 1997
Gorman	US 6,137,793	Oct. 24, 2000
Cutaia	US 2002/0004390A1	Jan. 10, 2002

#### REJECTIONS AT ISSUE

The Examiner has rejected claims 1 through 11, 13 through 25, and 27 under 35 U.S.C. § 103(a) as being unpatentable over the collective teachings of Farry, Opoczynski, Gorman, Dev, and Cutaia.

#### ANALYSIS

Initially, we note that Appellants have not presented separate arguments directed to independent claim 13 or dependent claims 14 through 16. While we recognize that Appellants attempted to cancel these claims in an amendment, submitted after final (dated November 5, 2006), the Examiner denied entry of this amendment (see Advisory Action Dated November 17, 2006). Accordingly, claims 13 through 16 are still pending and stand rejected. As Appellants have not presented arguments directed to these claims, we summarily affirm the Examiner's rejection of these claims.

Appellants argue on pages 8 through 13 of the Appeal Brief (dated November 6, 2006) and pages 2 through 4 of the Reply Brief (dated April 4, 2007) that the Examiner's rejection of independent claims 1 and 17 is in error. Appellants argue on page 12 of the Appeal Brief and page 3 of the

Reply Brief that contrary to the Examiner's finding in the statement of the rejection, Farley "does not teach or suggest the provisioning network elements with CPE [customer premise equipment] based upon assigned capacity of the network elements as claimed." In response the Examiner states:

[P]ermanent virtual circuits disclosed by Farry are in fact themselves information representative of the assigned capacity of network elements. A virtual circuit is simply a descriptive piece of information describing path, or chain of nodes, that connects a customer with a service provider. A virtual circuit doesn't have "capacity" per se, because it is nothing more than a series of instructions describing the path through a network that an information stream will take. On the other hand the availability of predefined permanent virtual circuits is information that is directly related to the capacity of the network elements, because any one network element will only support as many streams as there are permanent virtual circuits that include said network element in the paths they describe, and the number of total permanent virtual circuits represents the operating capacity of the entire network. Therefore the assignment of a permanent virtual circuit to a customer premises equipment is to provision network elements based on their assigned capacity, as claimed.

We disagree with the Examiner's rationale. Claim 1 recites "an online provisioning application ... for provisioning network elements in the HFC [hybrid fiber coax] network with CPE [customer premise equipment] added into the HFC network based on the assigned capacity of the network elements." Independent claim 17, recites a similar limitation. Thus, the scope of independent claims 1 and 17 includes that provisioning is performed based upon assigned capacity of network elements. As identified above, the Examiner's rejection of these claims relies upon Farry to teach the limitation of provisioning based upon capacity. We agree with the

Examiner that Farry teaches that CPE are assigned to virtual circuits (which include network elements). Farry teaches that the table of virtual circuits includes paths through the ATM switch and the distribution component to the terminal. Col. 7, ll. 24-26, col. 11, ll. 32-36. Thus, the virtual paths involve several pieces of equipment. However, we find no discussion in Farry concerning the capacity of the path or the assignment of the path being based upon the assigned capacity of the equipment in the path. The Examiner has not found, nor do we find, that the other references relied upon in the rejection of independent claims 1 and 17 teach that provisioning is performed based upon assigned capacity of network elements. As the references do not teach all of the limitations of independent claims 1 and 17, we will not sustain the Examiner's rejection of claims 1 through 11, 17 through 25, and 27.

#### SUMMARY

Appellants have presented no arguments directed to the rejection of claims 13 through 16, accordingly, we affirm the Examiner's rejection of these claims. Appellants' arguments have persuaded us of error in the Examiner's rejection of claims 1 through 11, 17 through 25, and 27, and we reverse the Examiner's rejection of those claims.

The decision of the Examiner is affirmed-in-part.

No period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

Appeal 2008-0355  
Application 09/851,285

AFFIRMED-IN-PART

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